19 42 **File No.** B. Civil cls/42

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Legal **DEPARTMENT**

B **BRANCH**

p. 14 2 E

Subject:—

Governors' Bill No XI of 1942

A Bill to amend the Bombay

Civil Courts Act 1869

(Insertion of new S. 12-A)

Bom. XI of 1942.

File No. B. Civil cls/42

Ltd. Sectt. Slip 24-B

Bom XI of 1942

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C O N T E N T S.

Legal Department File No. B. Civil Courts / 42.

Sr. No.	Compilation No.	Subject	Pages
		A Bill to amend the Bombay Civil Courts Act, 1869	
1.	U.O. to H.D. No. 7931 dt. 29-11-41 19-	Draft Bill	1
2.	U.O. to H.D.No. 825 dt.29-1-42	All cation of the Bill to entry No. 1 in List no. II and entry No. 4 in List no. III	3-8
3.	L.D. letter No. 3005 dt. 7-8-42	Assent of the G.G. to the Bill no XI of 1942.	9-13 P11-14 not typed
4.	U.O. to H.D. No. 3006 dt. 7-4-42	Draft Notfn. u/s 92(1) G. of I.Act. 1935	15-17
5.	U.O. to H.D. No. 3745 dt. 4-5-42.	Revised draft Notfn. u/s 92(1) G. of I Act. 1935	19-21
6.	U.O. No. 4148 dt. 5-5-42	G.G.'s assent to the Bill	23
7.	G.G. L.D.No. 3769 dt. 5-5-42	Publicati n of Bombay Act No. XI of 1942	25-29
8.	-----	Governor's Bill No. XI of 1942.	31-34
9.	------	Bom. Act. No. XI of 1942	~~35-36~~ 35-38 27 to 38 not typed

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The requisite draft Bill is appended. It may be shown to the High Court for remarks.

2. The subject matter of the Bill falls under entries 1 and 2 in List II and entry 15 in List III in the Seventh Schedule to the Government of India Act, 1935. Under executive instructions the Bill requires the previous approval of the Governor General before enactment. As the provisions of the Bill are repugnant to the provisions of the Bombay Civil Courts Act, 1869, which is an existing Indian law relating to entry 15 of the Concurrent Legislative list the Bill will have to be reserved for the consideration of the Governor General with reference to section 107(2) of the Government of India Act, 1935, and paragraph (2) of the Proclamation.

3. H.D. may not in this case followed the prescribed procedure before sending the papers to the R.L.A. for drafting the Bill. Attention in this connection is invited to the Secretary to the Governor's Circular No. 12/1 dated 10th May 1937. The papers should have been shown to H.E. the governor before forwarding them to the R.L.A. (and P. & S.D. Cir. No. 996 dated 3rd Sept. 1938.)

4. H.D. should attach a full Statement of Objects and Reasons to the Bill as required by the recent Circular of the Secretary to the Governor No. 201(12) dated 4th August 1941.

C.C. P.N.M.

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Remembrancer of Legal Affairs.

U.P. to H.D. No. 7931, dated the 19th September 1941.

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Submitted with reference to H.D. note dated 23rd December 1941 at p. 42 ante.

2. In para. 2 of his opinion No. 7931 dated 11th September 1941 the R.L.A. held that the subject Matter of the Bill to amend the Bombay Civil Courts Act, 1869, sent to H.D. with that opinion, falls under entries 1 and 2 in List II and entry 15 in List III in the 7th Schedule to the Govt. of India Act, 1935 and that as the provisions of the Bill are repugnant to the provisions of the Bombay Civil Courts Act, 1869, which is an existing Indian law relating to entry 15 of List III, the Bill will have to be reserved for the consideration of the Governor General with reference to section 107(2).

3. It will however appear from para 2 of Secy. G.'s note dated 15th December 1941 that the view taken by the Govt. of India is that the subject matter of the Bill falls under entry 1 in List II and entry 4 in List III and that the provision to which the Bill is is repugnant is relatable to entry 4 in List III and not to entry 15 therein. The R.L.A. is requested to consider th view taken by the Govt. of India.

4. The first part of entry 4 in List III in the 7th Schedule to the Govt. of India Act, 1935, is very wide. The view taken that the second provision./

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in the proposed new section 12A and the existing section 6 of the Bombay Civil Courts Act to which it is repugnant are relatable to entry 4 in List III therefore appears to be correct and may be accepted.

5. If approved the papers may be returned to H.D. with the remarks as in para. 4 above and a copy of Secy. G.'s note dated 15th December 1941 may be kept on the records of this office.

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S.A Proposed new section 12A divides it self into two provisions. In the first provision power is given to the Provl. Govt. to appoint the District Judge or the Asstt. Judge in any district to be also a Joint Judge in another district. The second provision gives power to such Joint Judge to hold his Court and transact civil business at any place in either district. In this office U.M. No. 7939 dated 11-9-41 it has been held that the provisions fall under entries 1 and 2 in List II and entry 1.5 in List III in the Seventh Schedule to the Govt. of India Act, 1935. The Govt. of India on the other hand hold that the first provision is relatable exclusively to entry 1 in List II and that the second provision and section 6 of the Act to which it is repugnant are relatable to entry 4 in List III.

2. The view taken by the Govt. of India is not free from doubt. The provisions

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of proposed new section 1-A relate more to the jurisdiction and powers of Courts and as entries 2 and 15 in List II and List III respectively specifically refer to such jurisdiction and powers, it would be difficult to say that they fall in other entries, namely, entry 1 in List II and entry 4 in List III. However as the view taken by the Govt. of India obviates the difficulty referred to in the concluding portion of para. 2 of Secy. G's note (pp. 41/42 ante) it may be accepted.

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U.S. to H.D.No. 625,
dt. 29/1/42.

A.L.S. The view stated in para. 2 of the note of the Secy. to Governor at p.41-42 ante may be accepted.

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K.L.A. P.B.H.
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Office of the Governor's Secretary

In continuation of this office un-
of icial reference No. 201(45), dated the
27th November 1941. H.D. is informed that
intimati nhas been received from the Joint
Secretary to the Governor/General (Public)
that provided that no important tax objections
to the pro-posed Bombay Civil Courts (Amendment)
Bill. 1941, are brought forward, of
which the Governor-General ought to be made
aware before he agrees that the Bill should
become law, and that no substantial amendments
are considered necessary after publication.
His Excellency the Governor-General
concurs in the preparation and reservation.
of this Bill. Minor and unimpor tant amendments
may be made without referring to him
again, but should be reported to this office
when forwarding the Bill for obtaining the
assent of His Excellency th Governor-General.

2. The view has been taken that the first
pro provision in the proposed section 12A and the
existing pro Provision of the principal Act to
which it is repugnant are relatable exclusively
to entry 1 in List II.. The second provision
in the proposed section 12A and section 6
of the prinicipal Act to which it is repugnant
ance are consid red to be relatable to entry
4 in List III, on the basis that the deter-
mination of the questica whether the presiding
officer of the a ccurt exercising jurisdiction/

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in respect of a particular area is or is not to be allowed to hold his court outside that area is a matter of civil procedure. If the provision of the existing Indian law to which this Bill is repugnant were on a correct view relatable to entry 15 of the Concurrent Legislative List, the Bill would be ultra vires in so far as jurisdiction in regard to matters coming within the Federal Legislative List is concerned (see item 53 of that List). As stated, however, the view taken is that the provision to which the Bill is repugnant is relatable to entry 4 in List III and not to entry 15 therein as held by the R.L.A. This point should be considered in consultation with the R.L.A.

Sd/- J.B.Irwin

Secretary to the Governor of Bombay.

U.R. to H.D. No. 201(45), dated 15th December 1941.

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No. 3005

Legal Department

Bombay Castle. 7th April 1942.

From

P.M.Moss. Esquire., Bar/at-Law. I.C.S.,

Secretary to the Governmentof Bombay.

To.

The Secretary to the Governor of Bombay.

Subject:-A Bill to amend the Bombay Civil Courts. Act. 1869.

Sir,

With reference to your Memorandum No. 201(45) dated the 15 th December 1941. addressed to the HomeDepartment. I am directed to forward herewith a copy of the Bill to amend theBombay Civil Courts Act. 1869. prepared by His Excellency the Governor under paragraph 3 of the Proclamation dated 4th November 1939 is used by him under section 93 of the Gverment of India Act. 1935.

2. None of the provisions of the Bill affects any special responsibility of the Governor under section 52(1) of the Government of India Act.1935. or falls within thepurview of clause (a).(b). (c).or (d) of paragraph XVII of theInstrument of Instructionsto the Governor of Bombay.

3. The subject- matter of the Bill falls under entry No.1 in the Provincial Legislative List and entry No. 4 in the Concurrent Legislative List in theSeventh Schedule to the Government of India Act. 1935. As clause 2. of the Bill containsprovisions repugnant to theprovisions of section 6 of the BombayCivil Courts Act. 1869. whichis an existing Indianlaw relating to entry No.4 in theConcurrent Legislative List. the Bill will have to be reserved for the consideration of the overor General with reference to paragraph (2) of the Proclamation and section 107(2) of the Governmentof IndiaAct. 1935.

4. I also forward herewith six spare copies of the

Bill , out of which five five copies are for transmission to theSecretary to the Governor General (Public).

I have thehonour to be,

Sir,

Your most obedient servant,

O.C. P.N.Moos.

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Secretary to the Government of Bombay ,
Legal Department.

Through
The Secretary to the Government of Bombay,

Home Department.

Id-

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Legal Department.

The Bill to amend the Bombay Civil Courts Act, 1869, has been forwarded separately through the Home Department to the Secretary to the Governor for obtaining the assent of His Excellency the Governor General to the Bill.

2. A draft notification under section 92(1) of the Government of India Act, 1935, for applying the proposed Act to the partially excluded areas in this Province is furnished herewith. If it is decided to apply the Act to the said areas, the Notification should be published in the Bombay Government Gazette on or after the date on which the Act will be published in the Bombay Government Gazette.

3. Attention of the Home Department is requested to this Department Circular No. 7627, dated the 29th August 1941. Orders of Government on the question of application of the Act to the partially excluded areas in this Province should have been obtained and communicated to this Department at the time of forwarding the papers for obtaining assent to the Bill.

O.C. Sd/-

for Secretary to the Government of Bombay,
Legal Department

U.R. to H.D.No. 3006, dated the 7th April 1942.

S.A.K.
1/5/56.

NOTIFICATION.

Home Department.

Bombay Castle 1942.

No. :- In exercise of the powers conferred by sub-section (1) of section 92 of the Government of India Act, 1935 the Governor of Bombay is hereby pleased to direct that the Bombay Civil Courts (Amendment) Act, 1942(Bom. of 1942) shall apply to the partially excluded areas in the Province of Bombay.

x To be filled in by H.D.

By order of the Governor of Bombay.

Secretary to Government.

S.A.K.
1/5/56.

Legal Department.

The position stated in para 3 of Home Department office ½ note at page 61 ante is correct. A revised draft notification in place of the draft notification at page 59 ante is sent herewith.

O.O. H.K.D.

4/5.

for Secretary to the Government of Bombay.
Legal Department.

U.O. No. H.D.No. 3746, dated the 4th May, 1942.

S.A.K.

1/5/56.

Notification.

Home Department.

Bombay Castle. May 1942.

No. :- In exercise of the powers conferred by sub-section (1) of section 92 of the Government of India Act, 1935, the Governor of Bombay is hereby pleased to direct that the Bombay Civil Courts (Amendment) Act, 1942 (Bom. of 1942) shall apply to the partially excluded areas in the Province of Bombay except the villages belonging to the following Mohomedan chiefs, namely:-

(1) the Parvi of Kathi,

(2) the Parvi of Nal,

(3) the Parvi of Singpur,

(4) the Talvi of Gachali,

(5) the Wasawa of Chikhli and

(6) the Parvi of Mavalpur.

By order of the Governor of Bombay,

Secretary to Government..

S.A.K.
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No. 201(45).
Office of the Governor's Secretary.
Government House.

Bombay , 4th May 1942.

From

J.B.Irwin, Esquire, DSO., MC., ICS.,
Secretary to the Governor of Bombay

To:

The Secretary to Government,
Legal Department, Bombay.

Subject : The Bombay Civil Courts
(Amendment) Bill , 1942.

Sir,

With reference to your letter No. 3005, dated the 7th April 1942, on the above subject, I am directed to forward herewith thecopy of the Bill to amend the Bombay Civil Courts Act, 1869, with His Excellency the Governor/General's assent signified thereon.

I have the honour to be,
Sir,
Your most obedient servant,

Sd/-

for Secretary to the Governor of Bombay.

S.A.K.

1/ 5/56.

Acts.

Publication of the Bombay Civil Courts (Amendment) Act. 1942.

GOVERNMENT OF BOMBAY.
Legal Department
Resolution No.3765.
Bombay Castle. 5th May 1942.

Letter to the Secretary to theGovernor. No. 201(45). 3005 dated the 7th April 1942..

Letter from the Secretary to the Governor. No. 201(45). dated the 4th May 1942:-

"With reference to your letter No. 3005 dated the 7th April 1942. on the above subject.I am directed to forward herewith the c py of the Bill to amend the Bombay Civil Courts Act. 1869. with His Excellency the Governor-General's assent signified thereon."

RESOLUTION.---The law should be published as Bombay Act No. XI of 1942. in the Bombay Government Gazette---- dated the 5th May 1942.

2. The Act should be translated into Marathi. Gujarati. Kannada and Hindustani (in Urdu and Devnagari Scripts) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Home Department.

By order of the Governor of Bombay.

Sd/-
P.N.Moos
for Secretary to Government

To

The Manager. Government Central Press. Bombay (with a copy of the Act, and with a request that 15 gazette copies of the Act may be forwarded to the Legal Department.)
The Home Department.
*The Oriental Translator to Government.) With a
The Secretary to the Bombay Legislative) copy of
Council. .. ..) the Act.
The Secretary to the Bombay Legislative) the Act.
Assembly. .. .. ..)

* With five extra copies

S.A.K.
1/5/56.

~~DRAFT BILL.~~

Bom Act—

~~GOVERNOR'S BILL~~ No. XI OF 1942.

A Bill to amend the Bombay Civil Courts Act, 1869.

WHEREAS it is expedient to amend the Bombay Civil Courts Act, 1869, for the purpose hereinafter appearing ;

XIV of 1869.

AND WHEREAS the Governor of Bombay has assumed to himself under the Proclamation dated the 4th November 1939 issued by him under section 93 of the Government of India Act, 1935, all powers vested by or under the said Act in the Provincial Legislature ;

26 Geo. 5. Ch. 2.

NOW, THEREFORE, in exercise of the said powers, the Governor of Bombay is pleased to make the following Act :—

1. This Act may be called the Bombay Civil Courts (Amendment) Act, 1942. Short title.

2. After section 12 of the Bombay Civil Courts Act, 1869, the following new section shall be inserted, namely :— Insertion of new section 12A in Act XIV of 1869.

XIV of 1869.

"12A. The Provincial Government may appoint the District Judge or the Assistant Judge in any district to be also a Joint Judge in another district. Such Joint Judge may hold his court and transact civil business at such place or places in either district as he may deem fit." Power to appoint District Judge or Assistant Judge in one district to be Joint Judge in another district.

STATEMENT.

There is no arrangement at present for the disposal of urgent civil work during the vacations as there is of criminal work. When the Sessions Judge of a District goes out of his District during the vacation, the Sessions Judge (or Additional Sessions Judge) of a neighbouring District is appointed Additional Sessions Judge for the disposal of urgent criminal work in the first district, and such Sessions Judge (or Additional Sessions Judge) disposes of the criminal work at his own headquarters. In view of section 6 of the Bombay Civil Courts Act, 1869, civil work cannot be disposed of outside the District in which it arises. It is, therefore, proposed to amend that Act to enable the District Judge of a neighbouring District who will be appointed Joint Judge in the absence of the District Judge during the vacation to dispose of civil work in either District.

BOMBAY: PRINTED AT THE GOVERNMENT CENTRAL PRESS.